

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

GREAT NORTHERN)
STOREHOUSE, INC. D/B/A FROG)
ROCK CAFÉ AND MOOSEHEAD)
LIMITED PARTNERSHIP,)

PLAINTIFFS)

v.)

Civil No. 00-7-B-H

NETHERLANDS INSURANCE)
COMPANY,)

DEFENDANT)

ORDER ON DEFENDANT'S RENEWED MOTION FOR JUDGMENT
AS A MATTER OF LAW AND DEFENDANT'S MOTION TO
AMEND JUDGMENT/JURY VERDICT

The defendant's renewed motion for judgment as a matter of law pursuant to Rule 50(b) as to the plaintiffs' claim for loss of contents (Docket Item 96) is **DENIED**. There was sufficient evidence of actual cash value for the jury. Exhibit 39 was admitted without restriction. It is a sworn statement that the actual cash value met the \$100,000 policy limit. If the insurance company wished to limit its liability to less than \$100,000, it was able to present any relevant depreciation figures for the jury's consideration. It did not. Nonetheless, the jury awarded an amount well under the policy limit. The insurance company has no basis for complaint.

The defendant's motion to amend judgment/jury verdict or in the alternative reduce amount of award for the building loss (Docket Item 95) is also **DENIED**. In retrospect, it appears that there was no issue for the jury on the amount of building loss once the jury assigned liability. The parties stipulated that the building was worth \$201,000. The policy deductible, as I instructed the jury, is \$1,000. The mortgage payout for the bank was \$95,000 (rounded). The proper net damage award for this category therefore is \$105,000, exactly what the jury awarded. Although the lawyers and I expected to deal with subtraction of the mortgage payout to the bank and the deductible after the verdict, the jury obviously did not understand that and proceeded to make its own calculations. Contrary to the insurance company's assertion, Exhibit 163 cannot support the figure of \$105,000 as a total value for the property because any such argument was waived by the stipulation that the property was worth \$201,000. The motion is therefore **DENIED**. Alternatively, if this ruling is reversed on appeal, I **GRANT** the plaintiffs a new trial solely on the issue of the damages for loss of the building—liability and all other matters being established. **So ORDERED.**

DATED: MAY 11, 2001.

D. BROCK HORNBY
UNITED STATES CHIEF DISTRICT JUDGE

U.S. District Court
District of Maine (Bangor)
Civil Docket For Case #: 00-Cv-7

GREAT NORTHERN STOREHOUSE, INC.
dba
FROG ROCK CAFÉ
 plaintiff

TYLER N. KOLLE, ESQ.
BERMAN & SIMMONS, P.A.
P. O. BOX 961
LEWISTON, ME 04243-0961
(207) 784-3576

and

MOOSEHEAD LIMITED PARTNERSHIP
 plaintiff

TYLER N. KOLLE, ESQ.
(see above)

v.

NETHERLANDS INSURANCE COMPANY
 defendant

JAMES S. NIXON, ESQ.
GROSS, MINSKY & MOGUL, P.A.
P.O. BOX 917
BANGOR, ME 04401
(207) 942-4644

MARIE CHEUNG-TRUSLOW, ESQ.
GERALD W. MOTEJUNAS, ESQ.
LECOMTE, EMANUELSON,
 MOTEJUNAS & DOYLE
PRESIDENTS PLACE
1250 HANCOCK STREET
QUINCY, MA 02169
(617) 328-1900